

Kerr-Tar Regional Council of Governments  
PO Box, 709  
Henderson, NC 27536  
Phone: 252-436-2040 Toll Free (866)506-6223  
Web: [www.kerrtarcog.org](http://www.kerrtarcog.org)

# KERR TAR REGION COUNCIL OF GOVERNMENTS

## REVOLVING LOAN FUND PLAN

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## **Section 1: Revolving Loan Fund Strategy**

### **Organizational Overview**

The Kerr-Tar Regional Council of Governments (COG) is the Economic Development District serving the five counties in the Kerr-Tar region of North Carolina. The service area includes Franklin, Granville, Person, Vance and Warren Counties. Since its creation in 1972, a primary goal of the COG has been to develop, attract, expand, and maintain better economic and employment opportunities within its five county service area. The COG's Revolving Loan Fund (RLF) is an economic development tool to assist in reaching our goal.

RLF funding comes from the Economic Development Administration (EDA). In 1986, the COG Board of Directors authorized the COG staff to submit an application to the Economic Development Administration for the Title IX Revolving Loan Fund under the Long Term Economic Deterioration (LTED) Program to help alleviate Region K's economic adjustment need created by a poor economic base throughout the five eligible counties of Region K.

The economic base of Franklin, Granville, Person, Vance and Warren counties is suffering from low per capita income levels, high poverty levels, low median family income levels, failing agricultural communities, and high unemployment rates.

On May 14, 1987, the Economic Development Administration (EDA), of the U.S. Department of Commerce, awarded a grant to the Kerr-Tar Regional Council of Governments to establish a new Economic Development program for Region K. The EDA grant amount of \$500,000 was matched by a State appropriation of \$166,000 to establish a Revolving Loan Fund (RLF) of \$666,000 to leverage other public and private funds to stimulate new job opportunities and/or retain existing employment opportunities.

### **Executive Summary of the Kerr-Tar Comprehensive Economic Development Strategy**

In March, 1975, the United States Department of Commerce's Economic Development Administration (EDA) designated the geographic area served by the Kerr-Tar Regional Council of Governments (COG) as an Economic Development District (EDD). As the administrative body of the Kerr-Tar EDD, the COG receives economic development planning funds from EDA and is eligible to participate in the development and administration of EDA-funded projects in the region. The COG is also responsible for preparation and maintenance of a Comprehensive Economic Development Strategy (CEDS) for the EDD.



A CEDS is the result of a regional economic planning process designed to guide the economic growth of the region. The purpose of the CEDS is to create a process that will “create jobs, foster more stable and diversified economies, improve living conditions and provide a mechanism for coordinating the efforts of people, organizations, local governments, and private industry concerned with economic development”. A CEDS is also necessary to qualify for EDA assistance with development.

2017-2021 CEDS Vision Statement:

The Kerr-Tar Region will be an effective, strategic economic engine by being locally, regionally, and globally competitive to maximize the region’s natural, human and infrastructure resources. As adopted by the CEDS Committee on July 25, 2017

The COG’s 2017-2021 CEDS lists the following goals for the region’s economic development:

Goal 1: Build on the Region’s Competitive Advantage and Leverage the Marketplace

1. Develop and Implement an Outreach Campaign to Attract Targeted Manufacturing Business
2. Develop a Uniform Business Retention and Expansion Program throughout the Region
3. Promote a Regional Marketing Initiative
4. **Cultivate Economic Entrepreneurship Through Entrepreneurial Activity by expanding access to capital by increasing outreach for the COG’s Revolving Loan Fund (RLF) and Micro-Enterprise Fund.**

Goal 2: Establish & Maintain a Robust Regional Infrastructure

1. Promote Transportation Access
2. Enhance Broadband Infrastructure and Connectivity Options
3. Consolidate Individual Capital Improvement Plans (CIP) into a Regional Plan
4. Establish Water Resources Management and Regional Collaboration to Ensure Long-Term Water Supply and Quality

Goal 3: Create Revitalized, Healthy, Secure and Vibrant Communities

1. Raise Awareness of Aging in Place or Aging in Communities
2. Revitalize Downtowns Throughout the Region
3. Promote Local Food Networks

#### Goal 4: Develop Talented and Innovative People

1. Address Targeted Industry Training Needs in Workforce Development Programing
2. Expand Work-Based Learning Programs
3. Offer Hospitality and Customer Service Training Planning

#### Goal 5: Promote greater Access to the Region's Existing Career Pathways Program

1. Foster greater collaboration with the existing Community Colleges in the Region (Vance-Granville and Piedmont Communtly Colleges)
2. Create regionally based Certified Career Pathways
3. Generate enthusiasm among employers and prospective employees

### **Business Development Objectives**

The goal of the COG Revolving Loan Fund is to assist in the creation and/or retention of private sector jobs within its five county service area by providing loan funds (gap financing) in conjunction with funds from conventional lending institutions, from other non-traditional, gap financing sources; and, from the borrowers' own equity financing. Loan funds will revolve perpetually, providing supplemental, short-term financing of business and industry proposals.

Business development objectives include:

1. To reduce unemployment by creating or retaining as many job opportunities as possible;
2. To increase the area's tax base by assisting with the expansion of existing industries and by encouraging new industrial and business development;
3. To redevelop vacant land or blighted building areas in order to make them productive again;
4. To aid in attracting other sources of capital to insure the best possible leverage of private sector dollars;
5. To stimulate private sector capital formation and aid in small business development;
6. To provide capital for manufacturing and service industry;
7. To leverage the required investment of at least two dollars for every one dollar of RLF funds. This leveraging requirement applies to the RLF portfolio as a whole rather than to



individual loans. Leverage investments may include private capital, state and municipal funding, CDBG, etc.

8. To increase per capital income through achievement of more favorable jobs to people ratio;

9. To aid minority-owned businesses and/or female business development by providing financial and technical assistance;

10. To fill financial gaps in existing local financial markets and provide capital which otherwise would not be available for economic development, and encourage greater private sector job creation and capital formation.

*Marketing Strategy:* COG Staff will be responsible for publicizing the availability of the Revolving Loan Fund program through the news media, flyers, and promotional brochures. COG Staff will meet periodically with economic developers, bankers, other non-traditional lenders, small business centers, and local government officials to publicize the program.

A variety of programs and activities are being undertaken by the public and private sector and/or economic development organizations to address the needs of targeted business. COG staff works with many of these organizations regularly to identify potential clients as well as support the other organizations in providing services needed by these businesses. Several sources described below are also very active in directing potential applicants to the revolving loan fund program.

Economic Development Staff of Public Agencies - COG staff meet and work with various economic development staff at the public agencies throughout the region. Collaboration efforts to address the needs of businesses occur between staff from the counties regularly. Each participating public agency has identified its target area's preference for business development. In order to reach the target area goals, a strong relationship between COG and agency staff is maintained. Potential applicants will be provided with a summary of the loan standards. A non-inclusive list of public agencies is below.

Franklin County and the municipalities of Bunn, Franklinton, Louisburg, and Youngsville

Granville County and the municipalities of Butner, Creedmoor, Oxford, Stem, and Stovall

Person County and the municipality of Roxboro

Vance County and the municipalities of Henderson, Kittrell, and Middleburg

Warren County and the municipalities of Macon, Norlina, and Warrenton

USDA-RD

## U.S. EDA

Small Business Development Center (SBDC) - COG staff work hand in hand with the Small Business Development Centers. Many of our potential and existing clients meet with the Vance-Granville Community College's Small Business Center and Piedmont Community College's Small Business Center representatives, when working on their business plans, going over their various financial statements, deciding whether or not to expand their operations or to add a service/product, or even when a business is looking to improve their business operations (financially and operationally).

Kerr-Tar Workforce Development Board- When working with the unemployed or businesses who are searching for trained employees as well as training incentives, the COG works with the Kerr-Tar Workforce Development Board. They are one of the state employment offices that provide information about local residents who are available for and seeking work. They also provides training. Loan fund borrowers will be encouraged to use training and placement resources available and to offer dislocated workers first priority in hiring.

Local Chambers of Commerce- Through events, being guest speakers on panels or luncheons to collaborating on outreach events, the COG works with many of the local chambers of commerce to reach out to businesses.

## **Financing Strategy**

There is a demand for financing options for fixed asset financing (land, equipment, and buildings), inventory, and working capital loans. Access to capital has become a focal point for economic development as it is identified as a limitation for all sectors of the regional economy. Low-cost financing can also be a significant incentive for businesses to expand and/or relocate in vacant or under-utilized areas, thus achieving the dual goals of business attraction, expansion, redevelopment, and blight elimination.

Many of our local credit unions and local banks are reaching out to small businesses to compete nationwide with online commercial lenders and other nonprofit organizations. Although many of the lenders are now competing for the same pool of clients, many of these lenders' criteria have not changed. This scenario still leaves a gap for those who have only been in business a few years, start-up businesses, those who do not have strong collateral positions, or those with a blemished credit history.

Due to these limiting factors for accessing private financing, public financing is a vital tool for business development in the region. RLF financing will be used to fill financing gaps and be accessed when credit is otherwise not available. The RLF will try to partner with other public sources of funds whenever possible to fill financing gaps. Other gap

financing sources that may be accessed include, but are not limited to: 1. Golden Leaf Foundation (non-profit funding) 2. Self-Help Credit Union (SBA lender) 3. North Carolina Department of Commerce (public funding) 4. County and municipal RLFs (public funding).

The RLF will make direct loans only when it has been determined that credit is not otherwise available under terms and conditions that would permit accomplishment of the borrower's project. The RLF will not make loan guarantees. RLF participation in a project must not displace commercial lenders. The RLF Loan Officer is responsible for determining that a borrower meets this requirement.

The maximum RLF loan participation granted a borrower shall not exceed \$200,000 (unless expressly approved by the RLF Committee and the COG Executive Board); or 75% of total Project Cost, whichever is the lesser. The minimum RLF participation will be \$25,000. Maximum participation by RLF will be evaluated on a project-by-project basis taking into consideration such factors as whether application is for project continuation or new start-up business, along with financial stability of the applicant.

*§307.15 Prudent management of Revolving Loan Funds.*

*(a) Accounting principles.*

*(1) RLFs shall operate in accordance with generally accepted accounting principles ("GAAP") as in effect in the United States and the provisions outlined in the audit requirements set out as subpart F to 2 CFR part 200 and the Compliance Supplement, which is appendix XI to 2 CFR part 200, as applicable.*

*(2) In accordance with GAAP, a loan loss reserve may be recorded in the RLF Recipient's financial statements to show the adjusted current value of an RLF's loan portfolio, provided this loan loss reserve is non-funded and is represented by a noncash entry. However, loan loss reserves shall not be used to reduce the value of the RLF in the Schedule of Expenditures of Federal Awards ("SEFA") required as part of the RLF Recipient's audit requirements under 2 CFR part 200.*

*(b) Interest rates—(1) General rule. An RLF Recipient may make loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. The minimum interest rate an RLF Recipient may charge is four percentage points below the lesser of the current money center prime interest rate quoted in the Wall Street Journal, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than the lower of four percent or 75 percent of the prime interest rate listed in the Wall Street Journal.*

*(2) Exception. Should the prime interest rate listed in the Wall Street Journal exceed 14 percent, the minimum RLF interest rate is not required to be raised above 10 percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.*

*§307.17 (a) RLF Cash Available for Lending*

*(a) RLF Cash Available for Lending shall be deposited and held in an interest-bearing account by the Recipient and used for the purpose of making RLF loans that are consistent with an RLF Plan or such other purposes approved by EDA. To ensure that RLF funds are used as intended, each loan agreement must clearly state the purpose of each loan.*

*§307.17 (b) Allowable Cash Percentage* Allowable Cash Percentage means the average percentage of the RLF Capital Base maintained as RLF Cash Available for Lending by RLF Recipients in each EDA regional office's portfolio of RLF Grants over the previous year.

*(a) Allowable Cash Percentage. EDA shall notify each RLF recipient by January 1 of each year of the Allowable Cash Percentage that is applicable to lending during the Recipient's ensuing fiscal year. During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules so that at all times they do not exceed the Allowable Cash Percentage.*

*(b) Recipient must not hold RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base for 24 months without an EDA-approved extension request based on other EDA risk analysis factors or extenuating circumstances.*

*(c) Restrictions on use of RLF Cash Available for Lending. RLF Cash Available for Lending shall not be used to:*

*(1) Acquire an equity position in a private business;*

*(2) Subsidize interest payments on an existing RLF loan;*

*(3) Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another Federal Agency's loan programs;*

*(4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;*

*(5) Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit, or any investment unrelated to the RLF; or*

*(6) Refinance existing debt, unless:*

*(i) The RLF Recipient sufficiently demonstrates in the loan documentation a “sound economic justification” for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or*

*(ii) RLF Cash Available for Lending will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF funds may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within a reasonable time frame approved by EDA following the date of refinancing.*

*(7) Serve as collateral to obtain credit or any other type of financing without EDA's prior written approval;*

*(8) Support operations or administration of the RLF Recipient;*

*(9) Undertake any activity that would violate the requirements found in part 314 of this chapter, including §314.3 (“Authorized Use of Property”) and §314.4 (“Unauthorized Use of Property”).*

*(10) Finance gambling activity, performances or products of a prurient sexual nature, or any illegal activity, including the cultivation, distribution, or sale of marijuana that is illegal under Federal law.*

*Nonrelocation. Recipient must not use RLF Award funds to induce the relocation of existing jobs within the U.S. that are located outside of Recipient's jurisdiction to within its jurisdiction in competition with other U.S. jurisdictions for those same jobs.*

*13 C.F.R. § 307.17(c) Credit Not Otherwise Available: The Recipient must determine and clearly demonstrate in the loan documentation for each RLF loan that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.*

## **Financing Policy**

This section discusses the specific policies designed to guide RLF financing, taking into consideration the need to manage and protect the RLF capital while accomplishing the objectives of the Business Development Strategy. The standard lending terms and any



special financing techniques that the RLF may utilize are discussed below in detail. The financing policies below are consistent with EDA policies and requirements.

Eligible Lending Area- Eligible applicants' proposed location of business must be located Franklin, Granville, and Person, Vance or Warren Counties or the municipalities within those counties.

Eligible Borrowers - Eligible borrowers for RLF funds include Private, for-profit proprietorship, partnership, LLC, or corporations.

Ineligible Borrowers-

- Land banking/real estate Investment Company
- Speculate building and Development Company
- Passive investment company, e.g. stocks, bonds, high-yield instruments
- Lending institutions
- Non-profit organizations, associations, and corporations

Eligible Loans-

- Land and Site Improvements – including land acquisition, engineering, legal, grading, testing, site mapping, and related costs associated with acquisition and preparation of land;
- Building Improvements – including real estate, engineering, architectural, legal, and related costs associated with acquisition, construction, rehabilitation of buildings, and demolitions;
- Purchase of Machinery and Equipment – including delivery, installation, engineering, architectural, legal, insurance, and related costs associated with acquisition and installation of machinery and equipment;
- Other costs contributing directly to the value of fixed assets, such as sales and use taxes, and interest on interim construction financing;
- Adequate contingency reserves;
- Start-up and working capital;
- Public and Private Infrastructure costs;
- Relocation expenses as per Uniform Relocation Assistance Act.

Terms-

The terms for repayment of loans will be made on a project-by-project basis. The shortest feasible term will be made available to insure rapid return of RLF funds in order to assist more borrowers.



Terms for fixed asset loans will not be greater than the weighted average useful life of the depreciable fixed assets of the project. Generally, maximum loan terms based on purpose and collateral will be offered as follows:

-Land and Building – 15 years

-Machinery and Equipment –10 yrs. new / 7 yrs. used or useful life documented by some non-affiliated source with a maximum of 10 years

-Working Capital – 5 years

The COG Board of Directors, upon recommendation from the Loan Review Committee, may make exceptions to these guidelines.

The RLF will have a solid but flexible payback policy. After evaluation of specific circumstances, the RLF Advisory Committee may approve a temporary moratorium on loan payment.

The COG may modify the terms under which RLF financing has been extended to enhance the ability of the RLF to achieve program objectives.

#### *§CFR 307.15 Required Loan Documentation*

*The standard loan documents must include, at a minimum, the following:*

- *Loan application;*
- *Loan agreement;*
- *Board of directors' meeting minutes approving the RLF loan;*
- *Promissory note;*
- *Security agreement(s);*
- *Deed of trust or mortgage (as applicable);*
- *Agreement of prior lien holder (as applicable); and*
- *Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will permit the COG to accept alternate documentation only if such documentation is allowed in the COG's EDA-approved RLF Plan.*

### **Portfolio Standards**

#### *§307.15 Leveraging Requirements*

*(c) RLF leveraging. (1) RLF loans must leverage additional investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, additional investment must be made within 12 months of approval of an RLF loan, as part of the same business development project, and may include:*

*(i) Capital invested by the borrower or others;*

*(ii) Financing from private entities;*

*(iii) The non-guaranteed portions and 90 percent of the guaranteed portions of any Federal loan; or*

*(iv) Loans from other State and local lending programs.*

*(2) Private investments shall not include accrued equity in a borrower's assets.*

A requirement for lending RLF funds is that the equivalent of at least one direct full-time 40 hours per week job is to be created/retained for every \$25,000 in RLF funds. The borrower will have two years from the date of loan closing to create/retain the committed number of jobs or a pro-rata amount of the RLF funds must be returned to the RLF fund.

The RLF program will attempt to fulfill a goal of directing 15 percent of new jobs created to the long-term unemployed. In attempts to achieve this goal, there will be coordination with the regional WIOA programs, local community colleges, and the NC Division of Workforce Solutions.

Priority will be given to loan applicant that meets the needs of the targeted population by providing a large number of permanent jobs and gaining opportunities for unskilled and semi-skilled workers.

### **Performance Assessment**

The Kerr-Tar COG RLF will be evaluated on at least an annual basis in conjunction with the reporting to the Economic Development District. EDA will calculate a risk rating for the RLF award by applying the Risk Analysis System to data reported by RLF Recipients through the standard RLF Financial Report (Form ED-209), audits, and other submissions. Specifically, EDA will assess the RLF award against fifteen measures to evaluate each RLF award's capital, assets, management, earnings, liquidity, and strategic results. This approach provides EDA with an internal tool for assessing the strengths and weaknesses of the RLF award and for identifying RLF awards that require additional



monitoring, technical assistance, or other corrective action. It will also provide the RLF with a set of portfolio management and operational standards to evaluate the RLF awards and to improve performance. The total possible rating points available are 45.

- Over 40 points is rated an A and need only report annually and have 90 days to submit reports.
- 30-40 points is rated a B and requires semi-annual reporting due within 30 days.
- Under 30 points is rated a C and requires semi-annual reporting and a corrective action plan.

Reports are based on the COG's fiscal year and require the ED-209 and a loan list for the entire life of the RLF.

***§307.16 Risk Analysis System.***

*(a) EDA shall evaluate and manage RLF recipients using a Risk Analysis System that will focus on such risk factors as: capital, assets, management, earnings, liquidity, strategic results, and financial controls. Risk analysis ratings of each RLF Recipient's RLF program shall be conducted at least annually and will be based on the most recently submitted Form ED-209 RLF report.*

*(b) An RLF Recipient generally will be allowed a reasonable period of time to achieve compliance with risk factors as defined by EDA. However, persistent noncompliance with these factors and their limits as identified through EDA's Risk Analysis System over multiple Reporting Periods may result in EDA taking appropriate remedies for noncompliance as detailed in §307.21.*

## **SECTION II: OPERATIONAL PROCEDURES**

### **Organizational Structure and Administrative Elements**

The Kerr-Tar Regional Council of Governments (COG) is the Development District serving the five counties in the Kerr-Tar region of North Carolina. The service area includes Franklin, Granville, Person, Vance and Warren Counties. Since its creation in 1972, a primary goal of the COG has been to develop, attract, expand, and maintain better economic and employment opportunities within its five county service area. The COG's Revolving Loan Fund (RLF) is an economic development tool to assist in reaching our goal. The RLF Policy Guidelines and Operating Plan will be reviewed, at a minimum, every 5 years.

The Board of Directors of the COG consists of at least 35 members appointed by the respective Municipal/County elected bodies. Additional members are appointed by the COG Board of Directors as needed to meet the demographics as required by the US Department of Commerce Economic Development Administration regulations.

The Board of Directors has the following responsibilities with regard to the lending activity of the COG:

1. To carefully consider the general direction and philosophy of lending desired for this agency.
2. To establish policies in sufficient detail to clearly define that direction and philosophy. The Revolving Loan Fund Plan document as approved by EDA and the Board of Directors shall be adopted by resolution as an official act of the board.
3. To charge senior management of the COG with responsibility for effective communication and implementation of the policy/plan.
4. To ensure that COG's loan portfolio is managed in compliance with approved policy and all applicable Federal and State laws and regulations.
5. To reconsider and approve the lending policy/plan on an as needed basis but at a minimum every 5 years.
6. To serve as the final decision body for loan approvals.
7. Members of the COG Board of Directors are not eligible to be appointed as members of the Loan Review Committee.
8. To appoint a Loan Review Committee whose purpose is to review and make approval/denial recommendations to the COG Board of Directors.



The LRC will consist of ten (10) members; two (2) from each of the five (5) counties served by the Kerr-Tar Regional COG. The LRC members shall be appointed by the COG Board of Directors for a two-year term. One (1) member from each county's delegation shall have banking experience. The second county member may be selected based on the COG Board of Directors' desires for diversity among the LRC.

This committee and the Kerr-Tar Regional COG Loan Officer will review all RLF applications, interview applicants to determine loan worthiness and repayment ability. Upon thorough review, the LRC shall instruct the RLF Loan Officer to make a recommendation to the Kerr-Tar Regional COG Board of Directors.

The COG Board of Directors shall directly approve loans by majority vote of a quorum of its members. All lending transactions must constitute impartial, arm's length transactions. As required by law, the RLF program is included in the annual single audit of the COG in compliance with 2 CFR part 200.

The RLF Committee will review and evaluate all loan applications. It will make recommendation on each loan application to the COG Board of Directors. No RLF loans will be made without the favorable recommendation of the RLF Committee. The COG Board of Directors makes the final decision on loan approval.

RLF Committee meetings are scheduled on an as-needed basis.

COG staff will be responsible for reviewing and packaging loans for submission to the Loan Review Committee. Loan packaging will consist of the following:

1. Meeting and interviewing potential applicants to gain an understanding of the project and its parameters, the principals and the potential structure of the deal. The purpose of the interview is to give the potential applicant specific information about the RLF program. To determine if the project is feasible, and to determine whether the proposed project meets goals of the RLF program.
2. Applicants which are determined to be eligible for RLF assistance will be given an RLF application and brochure which contains an outline of eligible projects, eligible applicants, and loan guidelines. An RLF application must be complete with all required documentation before it is submitted to the RLF Committee.
3. Completed RLF application packages are submitted to the RLF Committee for review and recommendation for approval/disapproval.



COG staff, is responsible for the administration, monitoring, reporting and servicing of the loan. Kerr-Tar COG will maintain the adequacy of the RLF's accounting system and maintain and update standard RLF loan documents at all times. A fidelity bond for all staff authorized to handle RLF will be maintained in an amount sufficient to protect the interests of EDA and the RLF.

Staff will make at minimum annual visits to the borrower's business, monitor the loan agreement for defaults in covenants and maintain an awareness of current and other borrowers. Loans are considered delinquent as defined in the executed Promissory Note.

Delinquencies in payments will be addressed by mail, telephone or personal visits from the staff. Delinquencies may be resolved by loan restructuring, moratorium on payments or other techniques as recommended by the RLF Committee. Unresolved delinquencies will be declared in loan default and turned over to the RLF attorney. The attorney will recommend and carry out appropriate courses of action, including foreclosure.

RLF program income, income received as a result of RLF lending activities, may be used to cover reasonable and necessary administrative cost of the RLF program within the same fiscal year the income is earned and the administrative costs are accrued. The remaining program income will be added to the RLF capital base for lending. All repayments of RLF grant principal must be returned to the RLF for subsequent lending. Proceeds from the sale, collection or liquidation of loan collateral will also be returned to the RLF for lending. The reasonable costs of collection or action to recover a loan are treated as administrative expense. Any proceeds from the sales of collateral assets above the original unpaid amount of the loan are treated as program income.

All funds in the RLF shall be retained in a special account, entirely separate from all other accounts, and may not be used for any purpose others than those eligible expenditures listed in this manual.

As a requirement of receiving an RLF loan, recipients are required to report their business results, using a pre-agreed-upon format, on a regular annual basis, to COG staff. Staff will review the information with the loan recipient, and include a summary of loan results/status in regular updates to the Loan Review Committee and other COG leadership.

#### *Revolving Loan Income/Expenses*

*§ 307.12 Revolving Loan Fund Income.*

*a) Defined. RLF Income means interest earned on outstanding loan principal and accounts holding RLF funds, all fees and charges received by the RLF, and other income generated from RLF operations.*

*b) Use of RLF Income. Recipient may use RLF Income to pay for RLF administrative costs, provided the RLF Income is earned and the administrative costs are accrued in the same fiscal year of Recipient. Recipient must add to the RLF Capital Base any RLF Income that is not used for administrative costs during the same fiscal year of Recipient that it was earned.*

*c) Administrative Costs Exceeding RLF Income. Recipient shall not use funds from the RLF Capital Base to pay for or reimburse administrative costs unless EDA has approved such use in writing.*

*4) Cost Principles*

*When charging costs against RLF Income, Recipient must comply with the cost principles of the OMB Uniform Guidance set forth at 2 CFR part 200 subpart E – Cost Principles.*

*5) Priority of Payments on Defaulted RLF Loans.*

*a) When Recipient receives proceeds on a defaulted or written off RLF loan, Recipient*

*must apply such proceeds in the following order of priority:*

*(i) First, towards any costs of collection;*

*(ii) Second, towards outstanding penalties and fees;*

*(iii) Third, towards any accrued interest to the extent due and payable; and*

*(iv) Fourth, towards any outstanding principal balance.*

*§ 302.17 Conflicts of interest*

*(A) General. It is EDA's and the Department's policy to maintain the highest standards of conduct to prevent conflicts of interest in connection with the award of Investment Assistance or its use for reimbursement or payment of costs (e.g., procurement of goods or services) by or to the Recipient. A conflict of interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests. A conflict may also exist where there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired. For*

*example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. Additionally, a conflict of interest may result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field.*

*(B) Prohibition on direct or indirect financial or personal benefits.*

*(1) An Interested Party shall not receive any direct or indirect financial or personal benefits in connection with the award of Investment Assistance or its use for payment or reimbursement of costs by or to the Recipient.*

*(2) An Interested Party shall also not, directly or indirectly, solicit or accept any gift, gratuity, favor, entertainment or other benefit having monetary value, for himself or herself or for another person or entity, from any person or organization which has obtained or seeks to obtain Investment Assistance from EDA.*

*(3) Costs incurred in violation of any conflicts of interest rules contained in this chapter or in violation of any assurances by the Recipient may be denied reimbursement.*

*(4) See § 315.15 of this chapter for special conflicts of interest rules for Trade Adjustment Assistance Investments.*

*(C) Special rules for Revolving Loan Fund (“RLF”) Grants. In addition, to the rules set forth in this section:*

*(1) An Interested Party of a Recipient of an RLF Grant shall not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of RLF loans;*

*(2) A Recipient of an RLF Grant shall also not lend RLF funds to an Interested Party; and*

*(3) Former board members of a Recipient of an RLF Grant and members of his or her Immediate Family shall not receive a loan from such RLF for a period of two (2) years from the date that the board member last served on the RLF's board of directors.*

*\*Interested Party means any officer, employee or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of the Recipient, such as*

*agents, advisors, consultants, attorneys, accountants or shareholders. An Interested Party also includes the Interested Party's Immediate Family and other persons directly connected to the Interested Party by law or through a business arrangement.*

Kerr-Tar COG Board Members RLF Committee members are required to sign notarized conflict of interest forms annually. Members with conflicts of interests must recuse themselves from participating in any deliberations or votes concerning the application creating the conflict.

## **Loan Processing Procedures**

### Required Loan Documentation

1. A "letter of denial" from a bank. The Kerr-Tar Regional Council of Governments (COG) RLF Program is designed to fill gaps in existing local financial markets. The RLF program is not a substitute for conventional lending sources. Before filing an RLF application, you must first formally apply for the loan with a bank. If the bank declines to participate in full or in part, you may then apply for a loan under the RLF program. If the bank denies your request, it can provide you with a letter of denial. A letter of denial must accompany your RLF application. The letter of denial must state the loan amount requested from the bank and the specific reasons that the loan request was denied. The letter of denial should match the loan being requested from the COG in dollar amount, terms and collateral being offered.
2. A completed Personal Financial Statement.
3. A Business Plan.
4. A Resume of the loan applicant(s). The resume should adequately summarize the business and professional experience of the applicant for the last 10 years. Resumes for all administrative and operational management personnel, principals in the business, and persons guaranteeing the loan should also be included.
5. Latest Balance Sheet and Profit/Loss Statements for last three years (for existing businesses).
6. Annual Balance Sheet and Profit/Loss Statements for the last three years (for existing businesses).
7. A 24-month cash flow projection and analysis (for existing and proposed businesses).
8. Information on all of the applicant's parents, subsidiaries and/or affiliated enterprises (if applicable). The required information includes: 1.) Name, address, nature of business and extent of affiliation; 2.) Latest balance sheet and profit/loss statement

(not over 90 days old); and 3.) Annual balance sheet and profit/loss statements for last three years.

9. A list of any business related equipment that is owned by the applicant and has a value of over \$100.

10. A list of the fixed assets to be purchased with the loan proceeds (if applicable) along with an approximate value of each item.

11. A list of prospective clients (if applicable).

12. A signed "Certificate of Assurances". This form certifies that the applicant and/or any beneficiary of the loan will comply with all appropriate state and federal laws (including environmental laws as noted in § 13 CFR 307.17) as they relate to the application and the acceptance and use of federal funds. Construction activity financed in whole or in part by the Kerr-Tar COG RLF must comply with the requirements of the Davis-Bacon Act, as amended.

13. Hazard and flood insurance with other forms of insurance as required by the COG if loan is approved.

14. A security deposit check for \$1,000. The deposit will pay for the loan processing and attorney fees. If the loan request is denied, the security deposit will be returned to the applicant.

15. In addition, credit reports, appraisal reports (if applicable) and environmental reviews (if applicable) will be required. There may be other exhibits pertinent to the RLF loan application that will be filled out by the COG such as a standard credit analysis.

16. Other information deemed necessary in the review and evaluation of the loan application.

#### Standard Collateral Requirements

In the determination of collateral requirements the COG Board may consider the merits and potential economic benefits of each loan request. The COG may secure a first, second, or third lien on available collateral. The lien position of the COG may be subordinate and inferior to lien or liens securing other loans made in connection with a project.

When the purpose of a loan is for working capital, the COG will normally obtain collateral such as liens on inventories, accounts receivable, fixed assets and/or other available assets of the borrower. Such liens will be properly recorded as prescribed by applicable state and local Uniform Commercial Code (UCC) laws. Ordinarily, COG funds will not be used to take a subordinate lien position or other Federal, State or Local loan programs participating in the project.



The COG will ordinarily require security in the form of the assignment of patents and licenses; the acquisition of hazard, liability and other forms of insurance including flood insurance, as appropriate, performance bonds, and such other additional security as is deemed necessary to mitigate the RLF's exposure. Kerr-Tar Regional Council of Governments, as administrator of the RLF, must be shown as a lender loss payee/mortgagee by endorsement on insurance.

Life insurance policies on key individuals with benefits assigned to the COG may be required on business owners of closely held corporations, partnerships or proprietorships, where the continuing success of the business is dependent on such key individuals.

Personal guarantees from a borrower's principal owners (partnerships and proprietorships) and their spouses, to the extent permitted by law, making them jointly and severally liable for the loan, will be required. In case of a corporate borrower, in addition to corporate asset, members of the Board of Directors holding twenty percent or more of the corporation's outstanding common stock or twenty percent or more of the corporation's voting stock and their spouses (if held jointly), will guarantee loans.

Security interest on equipment, machinery, office furniture, fixtures and personal property owned now or acquired from the proceeds of the loan may be required;

When appropriate, the RLF program may require security in the form of assignments of leases, contracts, and commissions. Additional security as the lender determines may be necessary to support the RLF's exposure.

Should it be determined that it is necessary or desirable to take actions to protect or further the interests of the RLF, COG shall act to sell, collect, liquidate or otherwise recover on loans extended by the RLF in accordance with the legal rights of the COG, other lenders, and the RLF borrower.

### **Loan Closing and Disbursement Procedures**

Once a loan application has been approved, it is necessary to implement this decision to make a loan. This involves interaction with the borrower to finalize all terms and conditions, preparation of legal documents, and lien searches if personal property or real estate is being used as collateral. All loans are closed through the COG's legal counsel.

The following describe these pre-closing activities:



Commitment Letter: The applicant is advised of the terms and conditions set forth by the COG Board through a commitment letter and is requested to supply any additional documentation necessary. Once all documentation is supplied, the loan documents are prepared by legal counsel.

#### Loan Closing Documents

Below is a minimum list of documents that will be required for the types of loans made under the RLF and any special timing requirements.

- Loan application
- Loan agreement
- Board meeting minutes approving the RLF Loan
- Promissory note
- Security agreement(s)
- Deed of trust or mortgage (as applicable),
- Title Insurance (as applicable),
- Personal Guarantees of owners/guarantors,
- Life Insurance Assignment,
- UCC Forms (as applicable),
- Proof of hazard insurance (as applicable),
- Agreement of prior lien holder (as applicable),
- A signed bank "turn-down" letter demonstrating that credit is not otherwise available,
- Board meeting minutes, resolutions, etc. confirming the decision of the recommendation of the Loan Review Committee and approval of the Board,
- Any other closing documentation deemed pertinent by legal counsel.

All funds are disbursed through the COG's legal counsel even in events where funds are being held (i.e. construction financing).

COG staff is responsible for entering and booking the new loan information into the RLF loan tracking software system and maintaining the legal and correspondence loan files. All loan documents will be kept in a fireproof, locked cabinet at all times.

#### **Environmental Requirements**

RLF loans will not be made to borrowers whose projects do not meet all applicable federal, state, and local environmental requirements. Such clearances are required as part of the application process. The environmental assessment and certification, required as part of the application, must identify areas of environmental sensitivity. Actions will be taken, as appropriate, based on information provided and assessment of any potential risks.



All RLF loan documents and procedures must protect and hold the Federal government harmless from and against all liabilities that the Federal government may incur as a result of providing an RLF Grant to assist directly or indirectly in site preparation or construction, as well as the direct or indirect renovation or repair of any facility or site. These protections apply to the extent that the Federal government may become potentially liable as a result of ground water, surface, soil or other natural or man-made conditions on the property caused by operations of the RLF Recipient or any of its borrowers, predecessors or successors.

The borrower will be required to comply with applicable laws and statutes, including, but not limited to the following:

*§ 307.17 Environmental*

*Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each non-Federal entity must comply with all environmental standards, to include those prescribed under the following statutes and E.O.s, and must identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.*

***a. The National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.)***

*The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions to determine whether they have significant impacts on the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements when the award activities remain subject to Federal authority and control. Non-Federal entities are required to identify to the awarding agency any direct, indirect or cumulative impact an award will have on the quality of the human environment, and assist the agency in complying with NEPA. Non-Federal entities may also*

*be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required, but DOC remains responsible for the sufficiency and approval of the final documentation. Until the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of performance to assess project environmental impacts, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit the appropriate environmental information and NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.*

***b. The National Historic Preservation Act (16 U.S.C. §§ 470 et seq.)***

*Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation (ACHP) implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties and, when appropriate, provide the ACHP with a reasonable opportunity to comment. Historic properties include but are not necessarily limited to districts, buildings, structures, sites and objects. In this connection, archeological resources and sites that may be of traditional religious and cultural importance to Federally-recognized Indian Tribes, Alaskan Native Villages and Native Hawaiian Organizations may be considered historic properties. Non-Federal entities are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Non-Federal entities may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers, ACHPs or other applicable interested parties necessary to identify, assess, and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation are complete and in the event that any additional information is required during the period of performance in order to assess project impacts on historic properties, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.*

*Additionally, non-Federal entities are required to assist the DOC in assuring compliance with the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 et seq., formerly 16 U.S.C. § 469a-1 et seq.); Executive Order 11593 (Protection and Enhancement of the Cultural Environment, May 13, 1971); Executive Order 13006 (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities, May 21, 1996); and Executive Order 13007 (Indian Sacred Sites, May 24, 1996).*

***c. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)***

Non-Federal entities must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to decide whether there is an alternative to minimize any potential harm.

**d. Clean Air Act (42 U.S.C. §§ 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.) (Clean Water Act), and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”)**

Non-Federal entities must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 et seq.), Clean Water Act (33 U.S.C. §§ 1251 et seq.), and E.O. 11738 (38 FR 25161), and must not use a facility on the Environmental Protection Agency’s (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System found at the System for Award Management (SAM) website located SAM.gov) in performing any award that is nonexempt under 2 C.F.R. § 1532, and must notify the Program Officer in writing if it intends to use a facility that is on the EPA List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

**e. The Flood Disaster Protection Act (42 U.S.C. §§ 4002 et seq.)**

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas. Per 2 C.F.R. § 200.447(a), the cost of required flood insurance is an allowable expense, if it is reflected in the approved project budget.

**f. The Endangered Species Act (16 U.S.C. §§ 1531 et seq.)**

Non-Federal entities must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

**g. The Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.)**

Funded projects must be consistent with a coastal State’s approved management program for the coastal zone.

**h. The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 et seq.)**

Only in certain circumstances can Federal funding be provided for actions within a

*Coastal Barrier System.*

***i. The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 et seq.)***

*This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.*

***j. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f et seq.)***

*This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.*

***k. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.)***

*This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and provides that non-Federal entities give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.*

***l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 et seq.) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note et seq.)***

*These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.*

***m. Executive Order 12898 (“Environmental Justice in Minority Populations and Low Income Populations”)***

*Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on low income and minority populations.*

***n. The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.)***

*Non-Federal entities must identify to DOC any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with the National Marine Fisheries Service*

(NMFS) regarding the potential effects of their actions, and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency procedures previously established under NEPA, the ESA, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

***o. Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)***

*CWA Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).*

***p. Rivers and Harbors Act (33 U.S.C. § 407)***

*A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States. Recipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.*

***q. The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 et seq.), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)***

*Many prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.*

***r. Executive Order 13112 (Invasive Species, February 3, 1999)***

*Federal agencies must identify actions that may affect the status of invasive species and*

use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

***s. Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.)***

*During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the U.S. Fish and Wildlife Service and fish and wildlife agencies of states must be consulted whenever waters of any stream or other body of water are “proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified” by any agency under a Federal permit or license.*

**Loan Servicing Procedures**

The COG staff is responsible for the administration, monitoring and the servicing of the loan from disbursement through full payment. The staff will make periodic visits to the borrower’s business, monitor the loan agreement for defaults, and maintain a loan payment schedule. The loan payment schedule will be kept-up-to-date with payments posted as to principal and interest. Delinquencies in payments will be addressed by mail, telephone, or personal visits from staff. Delinquencies can be resolved by loan restructuring, moratorium on payments or other techniques upon approval of the Kerr-Tar Board. Unresolved delinquencies will be declared loan default and foreclosure procedures will be initiated according to policy.

*§307.14 Revolving Loan Fund report.*

*(a) Frequency of reports. All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must complete and submit an RLF report, using Form ED-209, in a format and at a frequency as required by EDA.*

*(b) Report contents. RLF Recipients must certify as part of the RLF report to EDA that the RLF is operating in accordance with the applicable RLF Plan and that the information provided is complete and accurate.*

### *§307.13 Records and retention*

#### *(A) Closed Loan files and related documents.*

*The RLF Recipient shall maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-year (3) period from the date of final disposition of such Closed Loan. The date of final disposition of a Closed Loan is the date:*

*(1) Principal, interest, fees, penalties and all other costs associated with the Closed Loan have been paid in full; or*

*(2) Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the Closed Loan have occurred.*

#### *(b) Administrative records. RLF Recipients must at all times:*

*(1) Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.*

*(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the report that covers the fiscal year in which such costs were claimed.*

*(3) Consistent with §307.11(a), for the duration of RLF operations, maintain records to demonstrate*

*(i) The adequacy of the RLF's accounting system to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations;*

*(ii) That standard RLF loan documents reasonably necessary or advisable for lending are in place; and*

*(iii) Evidence of fidelity bond coverage for persons authorized to handle funds under the Grant award in an amount sufficient to protect the interests of EDA and the RLF.*

*(4) Make available for inspection retained records, including those retained for longer than the required period. The record retention periods described in this section are minimum periods and such prescription does not limit any other record retention requirement of law or agreement. In no event will EDA question claimed administrative costs that are more than three years old, unless fraud is at issue.*

### **Loan Write-off Policy and Procedures**

EDA requires that the Operating Plan should include a well thought out, progressive approach to managing loans in default to the point of write off and submission of a 1099C to IRS and borrower. This management and write off policy follows:

#### Late Payment and Collection Procedures

The COG Finance Director will invoice borrowers monthly and receive and deposit loan and interest payments into an interest bearing RLF bank account. Additionally, upon request, the COG Finance Director will provide monthly reports of disbursements, receipts of interest and principal and any past due accounts. Timely notification of any payment due and not paid will be provided. Late fees shall be 5% of the payment outstanding and begin accruing on the first day of the month after the payment is due.

#### Late Payment Follow-up Procedures

- a. Upon being advised that a payment due was not made, COG staff will contact the borrower promptly to determine the problem, if any exists.
- b. The COG Finance Officer will send a written notice of delinquent payment 5 working days after due date with notification of late penalty, and will notify the COG RLF staff in writing.
- c. RLF staff will make personal contact when payment is 10 working days past due.
- d. COG Finance Officer will send a second written notice 30 days after the due date.
- e. COG Finance Officer will send a third written notice 45 days after the due date.
- f. During the first 30 days of delinquency, written and oral communication, as well as site visits by RLF staff will be utilized to resolve the delinquency.
- g. If, after 90 days a delinquency still exists and the loan has not been renegotiated or brought current, the loan will generally be determined to be in default and recovery of the security will commence.
- h. Any renegotiation of loan terms to remedy a default must be approved by the RLF Committee and the COG Board of Directors.
- i. If at any time during this 90-day period, the Chairperson or Committee believes that the borrower cannot or will not bring the loan current, with Committee approval, RLF staff can declare the loan in default and begin recovery against collateral, if deemed appropriate.

#### Collection Procedures

The COG staff will work to exercise all rights and privileges of a lender in order to collect the proceeds on delinquent loans. To ensure that the delinquent loan is collected in an appropriate, efficient, and timely manner, staff will:

- a. Prepare a plan of action with guidance by the COG attorney for collecting the loan and taking action against the collateral.
- b. Make sure all required loan documentation is in order.

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- c. Consult with the Attorney on all default notices and collection efforts and to ensure that no laws or regulations will be violated by the collection effort and that all legally required actions are taken.
  - d. Instruct COG Attorney to contact all other co-lenders as appropriate.
  - e. List defaulted or chronically delinquent loans with credit bureaus.
  - f. Instruct COG attorney to notify the guarantors of the default and put them on notice that they are expected to make payment, in full, upon demand.
  - g. Instruct COG attorney to begin collection procedures and/or asset liquidation process.

Kerr-Tar COG will exhaust any and all means available for the collection of all outstanding loans that are declared in default status. All write-offs must be directed from the Committee to the COG Board of Directors for approval and signoff. In the event that it becomes necessary to write off the remaining balance of an uncollectible loan, the recipient will be issued a 1099-C which will also be submitted to the IRS as required.